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RR RUEHHM
DE RUEHHI #1399/01 3571025
ZNR UUUUU ZZH
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FM AMEMBASSY HANOI
TO RUEHC/SECSTATE WASHDC 8921
INFO RUEHHM/AMCONSUL HO CHI MINH 5419

UNCLAS SECTION 01 OF 03 HANOI 001399

SENSITIVE
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STATE FOR U/SM KENNEDY, OBO/AM/EAP, OBO/RE/EAP/EX/MLS,

E.O. 12958: N/A

TAGS: [ABLD](#) [AMGT](#) [KREC](#) [VM](#)

SUBJECT: GVN TURNS DOWN AUTOMATIC EXTENSION OF 99 YEAR NEC LEASE

REF: a) U/S Kennedy E-Mails to Amb Michalak Dated December 16 and 17 b) Hanoi 1341 c) State 108269 d) Hanoi 1147

¶1. (SBU) Summary and Action Request: The GVN has once again unequivocally stated that they cannot agree to any formula for extending NEC lease terms beyond the maximum of 99 years for diplomatic organizations permitted by their Land Law, and the 99 year term for the future USG NEC site specified in our 1995 bilateral agreement with Vietnam regarding transfer of diplomatic properties. They also unambiguously rejected the possibility of providing a monetary value for a second term of 99 years in the NEC lease agreement. In light of these developments, Embassy requests clearance on a non-paper revised from that originally proposed in Hanoi 1341 that is partly based on the language contained in a non-paper the GVN presented to the Embassy on December 18. End Summary and Action Request.

¶2. (SBU) On December 17, the Embassy sent to the MFA a non-paper that included questions from U/S MGT Patrick Kennedy in his December 16 e-mail regarding the possibility of extending lease terms beyond 99 years. They were:

--Is the problem with the 99 + 99 year term, i.e., two terms of 99 years? Would a 40 year lease with four 40 year renewals be an acceptable alternative?

--Is the problem with a 99 + 99 year lease that the United States Government would not pay anything for the second term? Could an agreement be written so that the U.S. Government makes a nominal payment, say \$1 or \$100 for the follow-on 99 year period?

--Is there any alternative formulation that the Vietnamese Government would accept that would lengthen the term beyond 99 years?

¶3. (SBU) DCM Virginia Palmer, accompanied by MGT/C Robert Riley, met with MFA Americas Division Deputy Director General Le Huy Hoang December 18 to seek the GVN's answers to these questions. An obviously ruffled Hoang reported that the GVN was "insulted" that we had not moved forward from the meeting on December 4 (reftel). The GVN, in turn, was considerably less tractable about NEC site provisions than had been the case during the December 4 meeting. Instead of answering the questions contained in the Embassy December 17 non-paper, the GVN presented a non-paper that appears to backtrack dramatically from the December 4 meeting (see paragraph 3).

¶4. Begin text of GVN non-paper:

¶1. The Government of the Socialist Republics of Viet Nam and the Government of the United States of America agreed to create favorable conditions for the settlement of matters regarding diplomatic properties of Viet Nam in the U.S. and those of the U.S. in Viet Nam.

The Vietnamese side takes note of the Diplomatic Note No. 1261/08 dated October 15, 2008 and other points exchanged by the US Embassy in Ha Noi thereafter regarding the settlement of diplomatic properties of Viet Nam in the U.S. and those of the U.S. in Vietnam.

¶2. In conformity with the current laws, conditions, and proceedings

from the needs of each country, considering the principle of reciprocity and other requirements towards the construction of diplomatic premises for each country, the Vietnamese side wishes to propose the following options for the US further consideration:

2.1 To apply the principle of the national treatment: In accordance with its laws, the U.S.A. shall permit Viet Nam's freehold right purchase of diplomatic properties (house/lands) in the U.S. for the construction of its diplomatic missions' chanceries (in Washington D.C., San Francisco, New York, Houston, and in other places in the future as needed). In accordance with its laws, Viet Nam shall permit the U.S. side to lease land site as needed for the U.S. diplomatic missions in Viet Nam. Accordingly, the Vietnamese side agrees to permit the U.S. side to lease the land area X4 of 40.060m2 in the Ciputra site for a period of 99 years and will consider extension for another period of 99 years at the time when the first 99-year land lease terminates.

At the time of 10 years before the first 99-year lease terminates, both sides shall negotiate towards the extension of the land lease for another 99 years in conformity with Viet Nam's laws, conditions and practices at the time of the new land lease contract.

2.2 To apply the principle of reciprocity: the Vietnamese side requests the U.S. side to permit Viet Nam the right to purchase and have freehold ownership of lands/properties in the U.S. with total areas equivalent to the US's currently owned land/properties in Viet Nam. Based on the mutual Agreement on transfer of diplomatic properties signed on January 28, 1995, the total areas of lands/properties of the U.S. in Viet Nam are about 23,000m2 and Viet Nam's current properties owned in the U.S., is about 1,700m2. At the same time, the U.S. side shall facilitate favorable conditions for Viet Nam to lease land site/houses in the U.S. with total areas

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that the US shall be able to lease in Vietnam, which would ensure security and good location as well as other requirements with the same lease period of 99 years and the lease shall be considered extension (sic) for another 99 years with the lease costs to be regulated by the U.S. Government in conformity with its laws regulations and practices.

End Text of GVN December 18 Non-Paper

15. (SBU) DCM followed up with a telephone call to MFA Director General for the Americas Nguyen Ba Hung, pressing again for answers to the non-paper questions and noting concern that the MFA's position of December 4 had crystallized into a non-paper. During the December 4 meeting, the GVN agreed to the principle of reciprocity (thus a lease limited to 99 years) for their diplomatic properties in the U.S.; and to the guaranteed extension of a second 99 year term for USG properties, with negotiation on price to occur ten years prior to the expiration of the first 99 year term. The GVN non-paper reversal to form of requesting freehold for their properties in accordance with national law, and the conditional nature of the second 99 year lease term was unexpected, she stressed. Hung was considerably more forthcoming than Hoang, although he was unequivocal in stating that anything beyond a 99 year lease term for the NEC site would not be feasible. He also rejected the possibility of building into the agreement a monetary value for the second 99 year lease term. Hung said the MFA did not understand our neuralgia over lease longevity, saying cryptically "we anticipate major changes in Vietnam in the next 99 years."

16. (SBU) Paragraph 2.2 of the MFA non-paper derives from a GVN position regarding land reciprocity put forth by Hung during the December 4th meeting that was subsequently put aside during that meeting as unworkable, and not in accordance with the bilateral 1995 agreement on the transfer of diplomatic properties. We were surprised to see this proposal in the GVN non-paper, and take its appearance as a measure of the GVN unhappiness with the Embassy's non-paper of December 17.

17. (SBU) We believe that the GVN will not agree to specify a monetary value, nominal or otherwise, for a second 99 year lease in a NEC site agreement. An alternative approach would be to build a

clause in the agreement that would specify that, in accordance with reciprocity, any additional monetary value assessed against the property for a second 99 year lease term for the USG would also be assessed against the GVN. In order to get the NEC negotiations back on track and moving forward, the Embassy requests clearance on a revised non-paper, using some of the basic wording included in the MFA non-paper, but adding other points contained in Hanoi 1341.

18. (SBU) Begin suggested text:

To apply the principle of reciprocity: In accordance with reciprocity, the U.S.A. shall permit Vietnam to lease for 99 years the sites of its diplomatic properties (house/lands) in the U.S. for the construction of its diplomatic missions' chanceries (in Washington D.C., San Francisco, New York, Houston, and in other places in the future as needed). In order to facilitate the rental of the properties of the Socialist Republic of Vietnam in the United States, the Department of State's Office of Foreign Missions will oversee and facilitate the rental of these properties. In accordance with its laws, Viet Nam shall permit the U.S. side to lease land as needed for the U.S. diplomatic missions in Viet Nam. Accordingly, the Vietnamese side agrees to permit the U.S. side to lease the land area X4 of 40.060m2 in the Ciputra site for a period of 99 years and will extend the lease for another period of 99 years at the time when the first 99-year land lease terminates.

Ten years before the first 99-year lease terminates, the lease will be extended for another 99 years in conformity with Viet nam's laws, conditions and practices at the time of the new land lease contract.

Any additional costs requested for a second 99 year lease term would be applied equally to the two sides.

The United States of America agrees to pay 28 million dollars to the Socialist Republic of Vietnam for 4 hectares of X4 land in Ciputra Westlake Development, based on a fee simple equivalent lease and transferability of rights, which will be paid in one installment.

The United States of America will agree to pay to Ciputra Westlake Development a firm, fixed reasonable infrastructure cost within a range of 20 percent of 3.8 million dollars.

In accordance with Vietnam's 2003 Land Law, the United States shall be entitled to transfer the right to use the leased site corresponding to the paid lease period and properties owned by the U.S. side on the leased site to a third party in accordance with the laws of Vietnam and the area planning at the time of transfer. Should the laws of Vietnam change to provide for freehold ownership of land, the USG properties in Vietnam, and the Socialist Republic of Vietnam properties in the United States will be automatically converted to freehold status.

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End suggested text.

Michalak